IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 701

CURTIS REID, SUPERINTENDENT OF THE DISTRICT OF COLUMBIA JAIL, *Appellant*,

v.

CLARICE B. COVERT

Appeal from the United States District Court for the District of Columbia

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MOTION TO DISMISS OR AFFIRM

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AUTHORITIES

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16(1), appellee moves that the appeal be dismissed for the want of jurisdiction, or, in the alternative, that the judgment below be affirmed.

I. THE APPEAL SHOULD BE DISMISSED BECAUSE NOT WITHIN 28 U. S. C. § 1252, INASMUCH AS APPELLANT IS NOT AN OFFICER OR EMPLOYEE OF THE UNITED STATES OR ANY OF ITS AGENCIES.

The Court has no jurisdiction of this appeal for the reason that appellant is only an officer or employee

of the District of Columbia, and thus does not come within 28 U. S. C. §1252 as an officer or employee of the United States or of any of its agencies. The appeal must therefore be dismissed.

1. There are three requirements for a direct appeal under 28 U. S. C. § 1252:

First, the proceeding must be a civil action; that requirement is met, as of course habeas corpus is a civil proceeding. E.g., *Gonzales* v. *Cunningham*, 164 U. S. 612, 618.

Second, an Act of Congress must have been held unconstitutional by a United States District Court; and it is clear from the opinion of Judge Tamm (Jur. St. App. 1a-3a) that he meant to, and did, hold that Article 2(11) of the Uniform Code of Military Justice, 50 U. S. C. § 552(11), was unconstitutional, certainly as applied to the appellee.[1]

Third, "the United States or any of its agencies, or any officer or employee thereof" must be a party to the cause. At this juncture, appellant fails to establish jurisdiction for this Court to entertain his appeal, because he is not within the statute.[2]

2. Appellant is, as the caption of the case shows, Superintendent of the District of Columbia Jail. As

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[1] It is sufficient for jurisdiction under 28 U. S. C. § 1252 that the application of the Act be held unconstitutional in the circumstances of the particular case. *Fleming* v. *Rhodes*, 331 U. S. 100.

[2] It is not, nor could it be, contended that the United States is a party because, in this habeas corpus proceeding, the petition was captioned "United States of America on the relation of Clarice B. Covert" (Jur. St. App. 1a). Indeed, appellant in his Jurisdictional Statement entitles the present case simply *Curtis Reid, etc.* v. *Clarice B. Covert*, dropping out entirely the *U. S. ex rel.*

such, he was formerly appointed and removed by the Commissioners of the District upon recommendation of the Board of Public Welfare (D. C. Code (1951 ed.) §§ 24-409, 24-411), but, since the reorganization of the District of Columbia Government, he is now subject to the supervision of the Director of the Department of Corrections, who in turn is appointed by the Commissioners. See Reorganization Order No. 34, in the Appendix to Title 1 of Supp. III to the 1951 Edition of the D. C. Code.

At any rate, appellant is an officer of the District of Columbia, and as such is neither an officer of the United States nor of any agency thereof.

The District of Columbia, both before and after the inauguration of its present system of government by three Commissioners, has uniformly been held to be a municipal corporation separate and distinct from the United States, and enjoying none of the general government's immunities. *Barnes* v. *District of Columbia*, 91 U. S. 540; *Metropolitan R. Co.* v. *District of Columbia*, 132 U. S. 1; *District of Columbia* v. *Woodbury*, 136 U. S. 450. See the *Metropolitan R. Co.* case, 132 U. S. at 7-8, where it was contended

> "that the government of the District of Columbia is a department of the United States government, and that the corporation is a mere name, and not a person in the sense of the law, distinct from the government itself. We cannot assent to this view. It is contrary to the express language of the statutes. That language is that the District shall 'remain and continue a municipal corporation,'[3] with all rights of action and suits for and against it. If it were a department of the government,

[3] Compare the present provisions, D. C. Code (1951 ed.) §§ 1-102, 1-105.

how could it be sued? Can the Treasury Department be sued; or any other department? We are of opinion that the corporate capacity and corporate liabilities of the District of Columbia remain as before, and that its character as a mere municipal corporation has not been changed."

The foregoing principle has been applied in a variety of situations. Specifically, it has been held that officers of the District of Columbia are not officers of the United States, whether they sue for pay in the Court of Claims (*Bundy* v. *United States,* 21 C. Cls. 429) or whether it is sought to impose on them liabilities attaching to federal employment (*Donovan* v. *United States,* 21 C. Cls. 120). Employees of the District of Columbia, not being employees of the United States, are not within the civil service laws that apply to the latter (*Griffith* v. *Rudolph,* 298 Fed. 672 (App. D. C.); 22 Op. Att'y Gen. 59; 29 Op. Att'y Gen. 410). The same distinction between the District and its employees, on the one hand, and the United States and the latter's employees, on the other, has been recognized by the accounting officers of the Government (13 Comp. Dec. 262; 13 *id.* 533). And the District of Columbia has been held not to be a "federal agency" within the meaning of the Federal Tort Claims Act, 28 U. S. C. §§ 2671 *et seq.* *Douffas* v. *Johnson,* 83 F. Supp. 644 (D. D. C.).[4]

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[4] *O'Toole* v. *United States,* 206 F. 2d 912 (C. A. 3), is not to the contrary. There alleged acts of negligence on the part of District of Columbia National Guardsmen engaged in summer training were held to be within the Federal Tort Claims Act. But the holding rested, not on the proposition that employees of the District of Columbia are employees of the United States, but specifically on the ground that, in view of the command arrangements governing the District of Columbia National Guard, its members were not in any sense employees of the District of Columbia.

3. The same distinction between the General Government and the District of Columbia has up to now also been recognized in legislation dealing with the jurisdiction of this Court. Thus in *American Security Co.* v. *District of Columbia*, 224 U. S. 491, it was held that local laws governing the District, even though enacted by the Congress, were not included in "any law of the United States" within the statute then authorizing appeals to this Court.

If, therefore, in the face of this unbroken line of decisions and rulings showing the District of Columbia to be separate and distinct from the United States, Congress had desired in 28 U. S. C. § 1252 to accord to the District of Columbia the hitherto rejected status of an "agency" of the United States, or had intended to assimilate employees of the District to those of the United States for purposes of the direct appeal authorized by that section, it would—and could—have used apt language to that effect. Neither the legislative history of 28 U. S. C. § 1252, nor that of Sec. 2 of the Act of August 24, 1937,[5] from which it was drawn, reflect any such purpose. And, significantly enough, when Congress intended to include any "person acting under" any officer of the United States or any agency thereof in a portion of 28 U. S. C. conferring federal jurisdiction, it used apt words to that end. See 28 U. S. C. § 1442(a)(1); *People of State of Colorado* v. *Maxwell*, 125 F. Supp. 18 (D. Colo.), motion for leave to file petition for prohibition or mandamus denied, *sub nom. State of Colorado* v. *Knous*, 348 U. S. 941. Undoubtedly, appellant in this case is a "person acting under" the officers of the Air Force who desired him

[5] C. 754, 50 Stat. 751, 752; see H. R. Rep. 212, S. Rep. 963, both 75th Cong., 1st sess.; 81 Cong. Rec. 8609, 8705.

to confine appellee (Exh. I to Appellant's return). But the question here concerns not § 1442(a)(1) but § 1252, and the latter provision does not contain the "person acting under" clause.

If the United States had intervened as a party, under 28 U. S. C. § 2403, the situation would now be different. But it did not choose to intervene, although the appellant was represented by the United States Attorney below.[6]

4. The result is that this appeal must be dismissed for want of jurisdiction.

II. ALTERNATIVELY, IF JURISDICTION IS HELD TO EXIST, THEN THE JUDGMENT SHOULD BE AFFIRMED, INASMUCH AS TOTH v. QUARLES, 350 U. S. 11, PLAINLY ESTABLISHES THE UNCONSTITUTIONALITY OF ANY STATUTE SEEKING TO SUBJECT CIVILIANS TO COURT-MARTIAL JURISDICTION IN TIME OF PEACE.

But, assuming that there is jurisdiction of this appeal, then the judgment should be affirmed, for the reason that *Toth* v. *Quarles*, 350 U. S. 11, renders the substantive questions herein so unsubstantial that further argument is not required.

A. The Toth case demonstrates the unconstitutionality of Article 2(11) of the Uniform Code of Military Justice

1. In *Toth* v. *Quarles*, 350 U. S. 11, decided at the present Term, this Court held that the clause "cases arising in the land or naval forces" in the Fifth Amendment did not constitute a grant of court-martial jurisdiction; that the power granted Congress in Clause 14 of Article I, Section 8, "To make Rules for the Government and Regulation of the land and naval

[6] It was doubtless for this reason that the district judge did not specifically certify the cause to the Attorney General.

Forces" "would seem to restrict court-martial jurisdiction to persons who are actually members of part of the armed forces"; and that Clause 14 is to be narrowly construed and is not broadened by anything in the Necessary and Proper Clause.

Since, as was there held, an ex-soldier could in consequence of the foregoing not be tried by court-martial, it would seem to follow as an *a fortiori* proposition that one who had been a civilian all of her life could not be subjected to military jurisdiction in time of peace either. That was the view of the district judge here (Jur. St. App. 2a). And the Solicitor General had earlier conceded as much in the *Toth* case (U. S. Br., No. 3 this Term, p. 31, n. 14): "Indeed, we think the constitutional case is, if anything, clearer for the court-martial of Toth, who was a soldier at the time of his offense, than it is for a civilian accompanying the armed forces."

In thus denying, in *Toth*, the power to subject former soldiers to military jurisdiction, the Court was simply affirming what Colonel Winthrop had always maintained as to the unconstitutionality of similar recapture provisions. 1 Winthrop, *Military Law and Precedents* (2d ed. 1896) *144-146 [1920 reprint, pp. 105-107]. And the necessary implication of *Toth*, that there is no constitutional power to subject a civilian to court-martial jurisdiction in time of peace, not only follows what Winthrop stoutly maintained, but is also in accord with the published views of successive Judge Advocates General of the Army over many years. Neither the scope of the *Toth* case, therefore, nor the ruling below in this case, can be dismissed as recent revelations unsuspected by earlier generations of military lawyers.

2. Winthrop laid it down in uncompromising italics (*op. cit. supra* at *146 [1920 reprint, p. 107]) that *"a statute cannot be framed by which a civilian can lawfully be made amenable to the military jurisdiction in time of peace."*

And for some forty years, from 1866 through 1906, there were published to the service and to the public rulings of The Judge Advocate General of the Army to the same effect. The following paragraphs are from p. 513 of the 1912 Digest of Opinions:

> "VIII G 2 a. By the sixth amendment of the Constitution, civilians are guaranteed the right of trial by jury 'in all criminal prosecutions.' Thus —in time of peace—a court-martial can not assume jurisdiction of an offense committed by a civilian without a violation of the Constitution. It is only under the exceptional circumstances of a time of war that civilians may, in certain situations, become amenable to trial by court-martial. [Citing rulings from 1866 to 1905.]"

> "VIII G 2 a. (1). *Held* that any statute which attempts to give jurisdiction over civilians, in time of peace, to military courts is unconstitutional. [Citing rulings from 1879 to 1906.]"

3. But when General Crowder appeared before Congress in 1912 and 1916 to urge the enactment of Article of War 2(d) of 1916, the precursor of Article 2(11) of the Uniform Code of Military Justice, see Jur. St. 11-14, *he never advised Congress that Colonel Winthrop and a whole series of his own predecessors had uniformly considered such provisions unconstitutional!* And it is fair to say that at no time thereafter, as Congress considered and enacted successive amendments to and revisions of the military code, were the

earlier views ever brought to its attention. Indeed, Congress was not even advised of the existence of a constitutional question.

Therefore, when appellant states (Jur. St. 9) that "The concept of subjecting to military jurisdiction civilians accompanying armies is not new", he utters a half-truth that, certainly with respect to American military codes, is tantamount to misrepresentation. For, as Winthrop shows, the jurisdiction traditionally exercised over civilian camp-followers was a narrowly construed power limited to time of war or actual hostilities, and to the actual area of such war or hostilities. Winthrop 131-138 [1920 reprint, pp. 97-102]. That is the jurisdiction conferred by Article 2(10) of the Uniform Code, "In time of war, all persons serving with or accompanying an armed force in the field"; that is the outer limit of the jurisdiction over those persons who, though not members of the armed forces, may properly be tried by court-martial as a "part" thereof, see 350 U. S. at 15; that is the constitutional boundary of court-martial jurisdiction over civilians. It was not until 1916 and thereafter that, in ignorance of prior rulings, unaware even of the existence of a constitutional question, Congress first sought to subject civilians to trial by court-martial in time of peace.

Significantly enough, the decisions in the lower federal courts relied on by appellant (Jur. St. 14) all involve either cases arising in time of war[7] or else

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[7] *Ex parte Gerlach*, 247 Fed. 616 (S. D. N. Y.); *Perlstein* v. *United States*, 151 F. 2d 167 (C. A. 3), certiorari granted, 327 U. S. 777, and dismissed, 328 U. S. 822; *In re Berue*, 54 F. Supp. 252 (S. D. Ohio).

cases arising in occupied territory.[8] The latter group concerns, not an exercise of the Clause 14 power to govern the land and naval forces, but rather an exertion of the Clause 11 war power, as this Court long ago recognized.[9]

Moreover the cases relied on by the appellant all involved the trial of civilians who had some appreciable functional connection with the armed forces.[10] A dependent wife has no such connection, and as late as June 1945, no dependent wife had ever been tried by an American court-martial; see the extensive compilation at 4 Bull. JAG 223-229 of the classes of civilians up to then subjected to military law. In 1947, The Judge Advocate General of the Army ruled that, as a matter of policy, dependent wives and children overseas would not be tried by court-martial. Aycock and Wurfel, *Military Law under the Uniform Code of Military Justice* (1955) 60. Not until 1950 was the luster of American arms

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[8] *United States ex rel. Mobley* v. *Handy*, 176 F. 2d 491 (C. A. 5), certiorari denied, 338 U. S. 904; *Rubenstein* v. *Wilson*, 212 F. 2d 631 (D. C. Cir.); *Grewe* v. *France*, 75 F. Supp. 433 (E. D. Wis.).

[9] See the early cases dealing with the power of the President as commander-in-chief to deal with occupied territory. *Cross* v. *Harrison*, 16 How. 164; *Leitensdorfer* v. *Webb*, 20 How. 176. Cf. *United States* v. *Rice*, 4 Wheat. 246 (British occupation of Maine in 1814). Similarly, *Madsen* v. *Kinsella*, 343 U. S. 341, is a war power case involving occupied territory and is therefore irrelevant to the present problem.

[10] *Gerlach* (mate on Army transport); *Berue* (seaman on ship carrying supplies for Army); *Grewe* (mechanical engineer with Army engineers); *Mobley* (post exchange employee); *Rubenstein* (status unclear; remanded for more precise determination; *Perlstein* (air-conditioning mechanic ashore in connection with salvage operations in harbor). Significantly enough, in the *Perlstein* case, *supra* note 7, where the functional relationship was most tenuous, this Court *granted* certiorari and the writ was dismissed only because the case became moot.

tarnished by the court-martial of a dependent wife."[11] And in the only case where the legality of such a performance after the cessation of military occupation has been sustained (*United States ex rel. Krueger* v. *Kinsella*, Jur. St. App. 4a-16a), an appeal has been perfected; it is now No. 7165 in the Fourth Circuit.

Appellant's assertion (Jur. St. 7) that appellee "was so intimately a part of the army overseas as to be subject to military jurisdiction in terms of American military law", does not rise above the level of rhetorical hyperbole. In actual fact, appellee, a dependent wife and the mother of two small children, was no more a part of the United States Air Force than if she had been quartered on any Air Force Base in the United States. And appellant's effort to fudge the constitutional issue through use of a figure of speech calls out for adherence to Mr. Justice Holmes' admonition: "As long as the matter to be considered is debated in artificial terms there is a danger of being led by a technical definition to apply a certain name, and then to deduce consequences which have no

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[11] "In case number 340593 Audrey L. Aguaya, a dependent wife, was tried in Japan on 10 February 1950 on a charge of larceny, committed in December 1949. She was convicted and sentenced to six months confinement, which was suspended. In case number 351230, Fumie Okitsu Hilton, a dependent wife, was tried at Osaka, Japan, on 18 January 1952 for unlawful possession of drugs, an offense committed 11 December 1951. Upon conviction she was fined $100, and sentenced to three months confinement, which was suspended." Respondent's reply brief in *United States ex rel. Krueger* v. *Kinsella*, H. C. No. 1726, S. D. W. Va., at p. 7.

Even casual reading between the lines strongly suggests that both trials were on an *in terrorem* basis. And since both took place while Japan was still occupied territory, there was undoubted military jurisdiction under AW 12 of 1948. Cf. *Madsen* v. *Kinsella*, 343 U. S. 341.

relation to the grounds on which the name was applied." *Guy* v. *Donald*, 203 U. S. 399, 406.

In the *Krueger* case, Jur. St. App. at 16a, the district court expressly rejected the Army's contention that a dependent wife accompanying the armed forces was a "part" thereof. The circumstance that the court there then went on to hold that the wife's trial by court-martial was authorized none the less, in the teeth of this Court's pronouncement that such jurisdiction is restricted "to persons who are actually members or part of the armed forces" (350 U. S. at 15), may well be ground for *per curiam* reversal; but assuredly it does not establish that, after *Toth*, there is any substantiality to the contention that civilians can be tried by court-martial in time of peace.

B. Even if it be assumed for purposes of argument that there was jurisdiction to try appellee by court-martial orginally, such jurisdiction was lost after she was returned to the United States and ceased to be a person "accompanying the armed forces without the continental limits of the United States" within Article 2(11)

It is entirely possible to affirm the judgment below without ever reaching the constitutional issue.

Assuming *arguendo* that there was jurisdiction originally to try appellee under Article 2(11) as a person "accompanying the armed forces without the continental limits of the United States", that jurisdiction was lost after her judgment of conviction was set aside by the United States Court of Military Appeals on June 24, 1955, since at that point she was in the United States, in a civilian penal institution,[12]

[12] Whereas AW 2(e) of 1916 through 1948 purported to subject to military law "All persons under sentence adjudged by courts-martial", see *Kahn* v. *Anderson*, 255 U. S. 1, Article 2(7)

and was no longer accompanying the forces abroad. Hence by the summer of 1955, when it was determined to retry her by court-martial (Jur. St. 4-5), she was no longer within the terms of Article 2(11).

The authorities relied on by appellant to establish that the court-martial jurisdiction, here assumed for purposes of argument to exist, still continued, will not survive examination. For the most part, these hold that, once charges are duly preferred, expiration of the soldier's enlistment pending trial does not defeat the right to proceed.[13] No one would dispute that proposition.[14] But it is wholly otherwise where, by affirmative act of the Government, the soldier or officer against whom charges are pending is duly separated, discharged, or mustered out; in that event the military jurisdiction ceases, because after separation the individual is once more a civilian.[15] And the same consequence follows where such separation takes place after he has been tried but before the proceedings have been approved.[16]

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of the Uniform Code restricts military jurisdiction over prisoners to "All persons *in custody of the armed forces* serving a sentence imposed by a court-martial." [Italics added.] Appellant admits that, at all relevant times, after her original conviction, appellee has been in civilian custody. Jur. St. 4-5.

[13] *Walker* v. *Morris*, 3 Am. Jurist 281 (Mass.); *In re Bird*, 2 Sawy. 33, Fed. Case No. 1428 (D. Ore.); *Barrett* v. *Hopkins*, 7 Fed. 312 (C. C. D. Kan.).

[14] *Accord: Winthrop*, *118-120 [1920 reprint, pp. 90-91]; Rig. Op. JAG 1912, p. 511, ¶¶ VIII D 1, D 2; Dig. Op. JAG, 1912-1940, p. 164, last three subparagraphs of ¶ 359(6).

[15] Winthrop, *116-118 [1920 reprint, p. 89]; Dig. Op. JAG, 1912, p. 514, ¶ VIII I 1; Dig. Op. JAG, 1912-1940, pp. 162-163, ¶¶ 359(1), 359(2).

[16] 5 Bull. JAG 35, ¶ 359(6); 5 *id.* 278, ¶ 407(3).

Here it was the Government itself that, by its own affirmative acts, changed appellee's status from that of a person accompanying the armed forces overseas to that of a person in civilian custody in the United States. She did not escape,[17] nor did she change from one status subject to military law to another similarly so subject.[18] Indeed, in consequence of the explicit terms of Article 2(7), *supra* note 12, she ceased to be subject to military jurisdiction the moment she was placed in civilian custody at Alderson (Jur. St. 4).

Here the Air Force, by returning appellee to the United States and there placing her in civilian custody, just as effectively terminated its jurisdiction over her, once the original conviction was set aside, as if, she being a WAF, it had discharged her before the proceedings against her had been terminated. For the military rulings teach that an affirmative separation from the service at any stage in the course of the court-martial proceedings causes those proceedings to abate.[19]

On this footing, any jurisdiction that existed was lost, and, in view of *Toth* v. *Quarles*, 350 U. S. 11, cannot now be reasserted.

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[17] As in *United States ex rel. Mobley* v. *Handy*, *supra* note 8, cited at Jur. St. 15.

[18] As in *Carter* v. *McClaughry*, 183 U. S. 365, and the *Perlstein* case, *supra* note 7, both cited at Jur. St. 15.

[19] Authorities cited in notes 15 and 16, *supra* p. 13. It is significant in this connection that the end of a war has been held to destroy war-time jurisdiction to try camp-followers who committed offenses in time of war. Dig. Op. JAG 1912, p. 151, ¶ LXIII B 1.

C. The power of Congress to maintain relations with foreign countries is utterly irrelevant here

Apparently somewhat unsure of his contentions under the law military, appellant adds a long argument (Jur. St. 15-20) to the effect that the Air Force's right to try appellee by court-martial can be supported as an exercise of the power to treat with foreign countries. It would be interesting to join issue with the many questionable contentions there urged, but the temptation must be foregone: appellant's foreign relations argument is utterly irrelevant to the present case.

First. Appellant admits (Jur. St. 4) that it was proposed to retry appellee by a court-martial convened at Bolling Air Force Base, within the District of Columbia. Thus appellant's argument comes to this, that the trial of a civilian woman by a court-martial convened at the very seat of Government, only a few short miles away from the regularly constituted courts of the United States and literally within the shadow of the Capitol dome, can somehow be sustained as an exercise of the treaty power.

It would be interesting to know whether, in the 166 years since this Court first sat, it has ever been tendered, from any source, a suggestion more weird than this one.

Second. But examination of the authority principally relied on, the Act of Parliament known as the United States of America (Visiting Forces) Act, 1942, St. 5 & 6 Geo. VI, c. 31 (Jur. St. App. 17a-27a), shows that nothing therein even purported to enlarge the jurisdiction of American courts-martial.

Sec. 2 (1) of that Act (Jur. St. App. 19a) provided that, for purposes thereof,

> "all persons who are by the law of the United States of America for the time being subject to the military or naval law of that country shall be deemed to be members of the said forces: * * *"

In other words, the British law is that anyone who as a matter of American law is subject to American military jurisdiction is as a matter of British law likewise subject to American military jurisdiction.[20] This leaves entirely open the issue here, whether appellee as a matter of American law (including, obviously, American constitutional law) *is* subject to American military jurisdiction. Thus nothing in the cited Act of Parliament, and nothing in the exchange of notes preceding its passage—nor, for that matter, nothing else relied on by the appellant—adds anything

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[20] With one exception, stated in the proviso to Section 2(1) immediately following the quotation in the text, viz., "Provided that no person employed in connection with the said forces, not being a citizen or national of the United States of America, shall be deemed to be a member of those forces unless he entered into that employment outside the United Kingdom." Otherwise stated, a British subject employed in the United Kingdom to work for the United States forces there could not be tried by an American court-martial even though literally within the then applicable portion of Article of War 2(d) of 1920, viz., "in time of war all * * * persons accompanying or serving with the armies of the United States in the field * * *" (41 Stat. at 787). (Inasmuch as the Act of Parliament in question was enacted while the United States was at war, the other portions of Article of War 2(d) were obviously irrelevant at that time.)

The opening clause of Article 2(11) of the Uniform Code of Military Justice, "Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law", must therefore be read in the context of the foregoing restriction. So read, the clause is one of limitation, not, as appellant erroneously assumes (Jur. St. 17-19), one spelling out a source of power.

whatsoever to the scope of military jurisdiction under the American Constitution.

It is not necessary to speculate whether it is ever possible, by agreement with a foreign nation, to enlarge the categories of American citizens who may be tried by American courts-martial; it is sufficient to say that appellant has failed to point to any treaty or executive agreement which in this case purported to enlarge the grant of court-martial jurisdiction that is now narrowly circumscribed by Clause 14, Section 8, Article I, of the Constitution of the United States.

CONCLUSION

For the foregoing reasons, this appeal should be dismissed for want of jurisdiction. If, however, it is to be entertained, then the judgment below should be affirmed.

Respectfully submitted.

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